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SONY BMG MUSIC ENTERTAINMENT;
and UMG RECORDINGS, INC.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

SONY BMG MUSIC ENTERTAINMENT, a Delaware general partnership; and UMG RECORDINGS, INC., a Delaware corporation,

Plaintiffs,

V.

TREVOR SPIETH AKA TREVOR RUNNELS.

Defendant.

CASE NO. 3:07-CV-04855-SI

Honorable Susan Illston

**EX PARTE APPLICATION TO CONTINUE
CASE MANAGEMENT CONFERENCE
AND EXTEND TIME TO SERVE
DEFENDANT AND [PROPOSED] ORDER**



1 Plaintiffs respectfully request that the Court continue the case management conference
2 currently set for August 15, 2008 at 2:00 p.m. to November 14, 2008. Plaintiffs further request,
3 pursuant to the Federal Rules of Civil Procedure, Rules 4(m) and 6(b)(1)(A), that the Court grant an
4 additional 60 days – until September 15, 2008 – to serve Defendant with the Summons and
5 Complaint. Plaintiffs request the extensions of time sought herein because they have not yet been
6 able to locate Defendant Trevor Spieth (“Defendant”) and serve him with process. In support of
7 their request, Plaintiffs state as follows:

8 1. Plaintiffs filed their initial Complaint for Copyright Infringement against a John Doe
9 Defendant on September 20, 2007. Plaintiffs did not have sufficient identifying information to name
10 the Doe defendant individually in the Complaint, but were able to identify the Doe by an Internet
11 Protocol address assigned by a third-party Internet Service Provider (“ISP”). In order to determine
12 the Doe defendant’s true name and identity, Plaintiffs filed their *Ex Parte* Application for Leave to
13 Take Immediate Discovery, requesting that the Court enter an Order allowing Plaintiffs to serve a
14 Rule 45 subpoena on the ISP.

15 2. The Court entered an Order for Leave to take Immediate Discovery on October 10,
16 2007, which was promptly served upon the ISP along with a Rule 45 subpoena. On November 16,
17 2007, the ISP responded to Plaintiffs’ subpoena, identifying the individual associated with the
18 Internet Protocol address. After Plaintiffs contacted this individual, she in turn identified the
19 Defendant, Trevor Spieth, as the actual infringer of Plaintiffs’ copyrights. Plaintiffs then
20 investigated this claim and believe Mr. Speith to be the actual infringer. Plaintiffs thus contacted
21 Mr. Spieth by telephone on January 16, 2008, and Mr. Spieth admitted committing the copyright
22 infringement at issue. The parties discussed settlement during this conversation, but no settlement
23 was ever reached.

24 3. Accordingly, on March 24, 2008, Plaintiffs filed the First Amended Complaint
25 naming Trevor Spieth aka Trevor Runnels as the individual Defendant. Plaintiffs then engaged a
26 process server.

27 4. Plaintiffs conducted database research to determine Defendant’s address. However,
28 when Plaintiffs attempted service at this address, they were informed that Defendant no longer

1 resides there. Plaintiffs have now contracted for a further investigation to determine where
 2 Defendant can be found and served with process.

3 5. Through routine investigation, Plaintiffs learned the name and telephone number of
 4 Mr. Spieth's friend, Brittany Holmes. Plaintiffs have spoken to Ms. Holmes on at least one prior
 5 occasion and believe that she has information regarding Mr. Spieth's whereabouts. However, Ms.
 6 Holmes has not willfully provided this information and has not returned at least two voice messages
 7 left for her after the initial conversation took place. Thus, Plaintiffs filed an *ex parte* application to
 8 take Ms. Holmes' deposition telephonically and a declaration in support of this application on July
 9 16, 2008. The sole purpose of the proposed deposition is to determine Mr. Spieth's current address
 10 or information leading to the discovery of his address so that Plaintiffs may serve him with process
 11 as soon as possible.

12 6. Since Defendant has not yet been served, there is no need for a case management
 13 conference at this time, and Plaintiffs respectfully request that the Court continue the case
 14 management conference from August 15, 2008 to November 14, 2008, or such other date as
 15 conveniences the Court. The case management conference was continued twice previously while
 16 this case was still in the Doe stage, once by the Court of its own accord, and twice by the Court upon
 17 Plaintiffs' request.

18 7. The current deadline for service of process is July 16, 2008. Plaintiffs request an
 19 additional 60 days – until September 15, 2008 – to effectuate service, so that Plaintiffs can continue
 20 to attempt to locate Defendant and serve him with process. The court granted Plaintiffs' two
 21 previous requests for 90-day service extensions, once while this case was still in the Doe stage, and
 22 once after the First Amended Complaint had been filed.

23 8. Plaintiffs submit that their efforts to contact Defendant and resolve the case before
 24 naming Defendant in the lawsuit constitute good cause under Rule 4(m) for any delay in perfecting
 25 service. *See Matasareanu v. Williams*, 183 F.R.D. 242, 245-46 (C.D. Cal. 1998) (stating good cause
 26 standard for service extensions). Moreover, unlike a traditional case in which the defendant is
 27 known by name and efforts to serve can begin immediately after filing the complaint, in this case
 28 Plaintiffs first had to file a Doe lawsuit and obtain the identity of the infringer through the subpoena

1 to the ISP, and then conduct a further investigation when that individual claimed she was not the
2 actual infringer. This Court has discretion to enlarge the time to serve even where there is no good
3 cause shown. *Henderson v. United States*, 517 U.S. 654, 658 n. 5 (1996).

4 9. Because the copyright infringements here occurred in 2007, the three-year limitations
5 period for these claims has not expired. *See* 17 U.S.C. § 507(b) (2000). There can thus be no
6 prejudice to the Defendant from any delay in serving the Complaint.

7 10. Plaintiffs will provide Defendant with a copy of this request and any Order
8 concerning this request when service of process occurs.
9

10 Dated: July 16, 2008

HOLME ROBERTS & OWEN LLP

12 By: /s/ Dawnell Alise Zavala
13 DAWNIELL ALISE ZAVALA
14 Attorney for Plaintiffs

16 **[PROPOSED] ORDER**

17 Good cause having been shown:

18 **IT IS ORDERED** that the case management conference currently set for August 15, 2008, at
19 2:00 p.m., be continued to November 14, 2008.

20 **IT IS FURTHER ORDERED** that, pursuant to the Federal Rules of Civil Procedure, Rules
21 4(m) and 6(b)(1), Plaintiffs' time to serve the Summons and Complaint on Defendant be extended to
22 September 15, 2008.

23
24
25 Dated: _____

By: _____
26 Honorable Susan Illston
27 United States District Judge
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